UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/38
28 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Disabled Peoples' International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 August 1991]

1. Disabled Peoples' International will first address the question of human rights and the environment and the study by Mrs. Fatma-Zohra Ksentini (E/CN.4/Sub.2/1991/8) which we think is an extremely important effort, not only for persons with disability but for all of humankind.

2. The relationship between environmental problems, human rights violations and disability is patently clear. As the Rapporteur for human rights and disability set out in his final report (E/CN.4/Sub.2/1991/31), Mrs. Ksentini's preliminary report gives a series of examples which clearly illustrates this point.

3. While it is early to reach any conclusions on a number of critical issues, we would like to bring to the attention of the Rapporteur and the Sub-Commission the example of the first modern ecological disaster - one which 30 years later still affects hundreds of survivors with serious disability, some of whom have yet to receive any remedy. This is the case of Minamata, Japan and the disastrous consequences of mercury poisoning.

4. The poisoning of Minamata Bay by Chisso Company began before World War II, was suspended for part of the war and began again in 1946. By 1953, most fish from Minamata Bay had disappeared and human beings in the area were beginning to show some effect. It was not until 1958 that scientists traced the origins of the mysterious disease to organic mercury discharge from the Chisso Company. It was not until 1969 that Chisso closed the section of its facilities which used mercury. And it was not until 1978 that authorities began cleaning up Minamata Bay - which as of today is still not finished.

5. Exact figures of human casualties - either death or permanent disability - have never been studied comprehensively. This is a fact that DPI finds totally unacceptable, especially because scholars have estimated that in Minamata and surrounding areas there are over 100,000 victims.

6. The Government has claimed no liability, saying there were no environmental protection laws at the time and no way for it to regulate Chisso or any other company. The Government has provided some limited medical care, physical rehabilitation and, in some cases, institutional care under conditions that DPI finds unacceptable.

7. Meanwhile, the victims and their lawyers fight for damages from Chisso individually (there are no class-action law suits under Japanese law), some winning fairly large settlements and some not as much. There are a number of victims that are unable to retain lawyers because they are too poor, and although the bar associations have tried to reach as many as possible, many victims have no representation. Chisso remains in operation, in part to be able to pay the damage awards of the victims. Because Chisso was facing bankruptcy, the Government passed a law in 1978 which was essentially a rescue package for Chisso but which placed the burden on Kumamoto Prefecture, which was required to issue bonds to sell to loan the proceeds to Chisso. Now, Chisso cannot repay the loans and the Prefecture is in fiscal crisis due to Yen 49,754 million outstanding.

8. Minamata may have been the first large-scale disaster but, as time has shown, it was not the last. DPI considers the incident one of human rights violations, not merely an unfortunate accident. Governments have a duty to promote and protect the lives and health of persons under their jurisdiction. It is not acceptable to have no legislation controlling the operations of industrial enterprises. Obviously, there is a need for effective international standards so that environmental catastrophes are not repeated. But if there are such catastrophes, the companies involved and the Governments are ultimately liable. In the case of companies operating in other countries, the country of origin of the foreign company also has a duty to regulate for safe operations and hence liability if the company does not operate safely.

9. There also must be effective remedies for victims of these catastrophes - the nearly 30-year wait for some victims to receive even a token remedy is clearly much too long. Governments should ensure that from day one, victims receive proper care and recompense.

This and other modern tragedies illustrate the mutually important efforts of Mrs. Ksentini and Mr. van Boven, whose Progress report (E/CN.4/Sub.2/1991/7) is now before the Sub-Commission and whose Final report on compensation will be completed at next year's session. We are convinced that recommendations made by Mr. van Boven regarding remedies such as restitution and compensation will be highly useful to Mrs. Ksentini as she develops her study.

Disabled Peoples' International also wishes to comment on the Progress Report on Discrimination against HIV-infected People or People with AIDS by the Special Rapporteur Mr. Luis Varela Quiros (E/CN.4/Sub.2/1991/10).

We also welcomed this initiative because as with persons disabled or ill from other conditions, persons with AIDS have experienced tremendous prejudice, misunderstanding and even persecution by private persons and by governments. The United States, for instance, still has discriminatory practices regarding travel visas for persons with AIDS. Additionally, there have been insufficient funds allocated for AIDS research, inadequate medical care and social services, and a failure to plan for future fiscal needs. Internationally, there is also discrimination involving fund allocation - there are some developing countries with overwhelming AIDS problems, particularly in Africa, that do not receive a proportionate share of funds with which to serve persons with AIDS and to carry out effective prevention and information programmes.

Certain governments have passed over situations of abuse and discrimination in their countries by arguing that the main culprits are private persons. We are therefore pleased that the Rapporteur has quoted Mr. B.G. Ramcharan on this point, who reminds us that States are under a duty to take measure to protect people from private discrimination.

In conclusion, the United Nations Charter requires international cooperation in solving international problems of a humanitarian character. In addition to recommendation on how individual governments can improve discrimination against persons with AIDS, we hope the Rapporteur can make some conclusions and recommendations on how the international community can best fulfill its obligations under the Charter to address the serious situation of AIDS worldwide.